



# Legislative Department Seattle City Council Memorandum

**Date:** April 25, 2011

**To:** Sally Clark, Chair  
Tim Burgess, Vice Chair  
Sally Bagshaw, Member  
Tom Rasmussen, Alternate  
Committee on the Built Environment (COBE)

**From:** Sara Belz, Council Central Staff

**Subject:** **Clerk File (CF) 310211:** Application of Lesley Bain for approval of a contract rezone of 48,885 square feet of land at 711 Bellevue Avenue East from Lowrise 3 (L3) to Midrise with a 60 foot height limit (MR-60) for future construction of two structures containing 60 residential units and parking for 70 vehicles. (DPD Project Number 3010378 / Type IV)

**Note:** If COBE votes to grant this rezone, the title of CF 310211 will need to be amended to increase the square footage of the rezone area to 55,870 square feet and make other technical corrections.

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## Overview

Lesley Bain (the “Applicant”) proposes a rezone of a site located at 711 Bellevue Avenue East from Lowrise 3 (LR3) to Midrise with a 60 foot height limit (MR-60). The site is located on the west side of Bellevue Avenue East and north of East Roy Street. A map of the proposed rezone area is attached to this memorandum. The site is comprised of six parcels that total approximately 55,870 square feet of property. The parcels are owned by Belroy Homes LLC.

## Facts related to the rezone:

- When the Applicant first proposed a rezone of the subject site, the property was zoned L3. As a result of recent amendments to multifamily zoning language in the Seattle Municipal Code, the site is now zoned LR3.
- The properties located immediately north, south and east of the site are zoned LR3. Properties to the north and west are zoned LR1/RC. Two nodes of Neighborhood Commercial 1 zoning with a 40 foot height limit (NC1-40) are located within two blocks of the rezone area.
- Surrounding land uses are primarily multifamily residential with building heights that range from three to 12 stories. A few single-family homes and small commercial uses are also located nearby.
- The proposal identifies this matter as a contract rezone and includes specific development plans for the site. The plans call for the preservation of the existing

BelRoy Apartments (51 units), the relocation or demolition of five existing single-family houses, and the construction of 58 new residential units, 49 additional underground parking spaces, and about 900 square feet of commercial space.

- About 22 more residential units would be constructed under the rezone proposal than would be permitted under current LR3 zoning.
- Under the Applicant's development proposal, almost 90 percent of the rezone site would be developed to heights of around 30 feet. Such heights would be permitted under LR3 zoning. The remainder of the site would include building heights of around 60 feet, necessitating the proposed rezone to MR.
- The rezone site is located within the boundaries of the Capitol Hill Urban Center and the Capitol Hill Neighborhood Plan area.
- Metro bus transit provides service to the rezone site along Bellevue Avenue. The future light rail station on Broadway is located about three-quarters of a mile to the southeast.
- While the eastern portion of the site is relatively flat, the western portion slopes steeply downward toward Interstate 5 and is classified as an environmentally critical area (ECA). A geotechnical consultant commissioned by the Applicant concluded that the ECA was created as a result of legal grading operations related to the construction of the freeway. No disturbance or development of the ECA is proposed as part of the contract rezone; however, some disturbance of the ECA buffer could occur on the northern portion of the site.
- The DPD Director reviewed the proposed rezone pursuant to SEPA and issued a Determination of Nonsignificance (DNS) that was not appealed. The Director also issued a design review approval that was not appealed.
- Six written public comments were submitted to the Hearing Examiner; five in favor of the project and one opposed. The letters favoring the rezone expressed support for the preservation of the BelRoy Apartments, the proposal's compatibility with existing development on the block, increased density, planned landscaping improvements, and the developer's commitment to quality and responsiveness to community feedback. The letter in opposition expressed concerns that the proposal did not qualify for a steep slope exemption and that the six-story portion of the project would not allow for a sensitive transition between zoning areas.
- A Property Use and Development Agreement (PUDA) will be required as the request is for a contract rezone and not a general rezone. It is standard City practice to include termination language in PUDAs that cause rezones to expire after two years unless an application for a Master Use Permit is issued within that two year time period. For this rezone, the Applicant requests the standard two year time limit be extended to six years.

### **Development Proposal**

The development proposal associated with this rezone calls for the preservation of the existing BelRoy Apartments (51 units), the relocation or demolition of five existing single-family houses, and the construction of 58 new residential units, 900 square feet of commercial space, and 49 underground parking spaces. Constructed in 1930-31, the L-shaped building known as the BelRoy Apartments was designated as a City landmark last fall. It was designed by architects William Bain and Lionel Pries. Of the 51 residential units that are located in the BelRoy, 27 are studios and 24 have one bedroom. A small

garage underneath the building and accessible via Roy Street can accommodate 14 cars. The five single-family homes that would be removed from the rezone site as part of the planned redevelopment are located along Bellevue Avenue East and date from the early 20<sup>th</sup> century. None of the houses are landmarked nor believed to be historically significant.

The 58 new residential units included in the Applicant's development proposal would be located in two buildings. The larger of the two would be an L-shaped structure that would mirror the BelRoy. Together, this building and the BelRoy would form a rectangle with two open corners. Within the courtyard space between the two L-shaped buildings, a smaller building would be constructed. The courtyard building and the portion of the new L-shaped building would extend along Bellevue Avenue East would be three stories, consistent with the height of the existing BelRoy Apartments. The portion of the L-shaped building that would extend along the northern boundary of the rezone site would be six stories. A small area behind the BelRoy Apartments, on the western edge of the rezone site, would be developed as a community garden or P-Patch.

Because the rezone area is located within the Capitol Hill Urban Center, the Applicant would not be required to provide additional parking on-site as part of the planned redevelopment effort. However, the Applicant intends to expand the BelRoy Apartments' existing underground garage in order to provide parking for 63 vehicles.

### **Type of Action**

Because this rezone is site-specific, the matter is considered quasi-judicial under the Seattle Municipal Code.<sup>1</sup> Quasi-judicial rezones are subject to the Appearance of Fairness Doctrine, which prohibits ex-parte communication. Council decisions must be based on the record established by the Hearing Examiner.

The Hearing Examiner established the record at an open-record hearing.<sup>2</sup> The record contains the substance of the testimony provided at the Hearing Examiner's open record hearing and the exhibits entered into the record at that hearing. Those exhibits include, but are not limited to, the recommendation of the Director of DPD, the State Environmental Policy Act checklist for the proposal, maps showing the rezone area, the rezone application, copies of public comments, and other materials.

### **The Record**

Selected documents and exhibits from the record are reproduced in Councilmembers' notebooks. The entire Hearing Examiner's record is kept in my office and is available for review at Councilmembers' convenience. Selected documents and exhibits reproduced here include:

- Hearing Examiner's recommendation (Yellow);

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<sup>1</sup> Seattle Municipal Code (SMC) Chapter 23.76.004.

<sup>2</sup> Council action shall be based on the record established by the Hearing Examiner. The Council may supplement the record with new evidence or information if the Council determines that the new evidence or information was not available or could not reasonably have been produced at the time of the open record hearing before the Hearing Examiner. SMC § 23.76.054E.

- Appeal of the Hearing Examiner's recommendation, submitted by Mr. Ross Radley (Green); and
- Responses to Mr. Radley's appeal, submitted by Ms. Melody McCutcheon (Blue); and
- Reply to Ms. McCutcheon's response, submitted by Mr. Radley (Lavender); and
- DPD's recommendation (Pink).

### **Recommendations from DPD and the Hearing Examiner**

Both DPD and the Hearing Examiner recommend approval of the proposed rezone. Specifically, the Hearing Examiner's Findings and Recommendation dated December 16, 2010, drew the following conclusions based on testimony at the open record hearing, submitted exhibits and DPD's analysis:

- Match between zone criteria and area characteristics: The rezone site and properties that surround it would function well as a Midrise zone. The area provides concentrations of housing in a desirable, pedestrian-oriented neighborhood in close proximity to a variety of services, amenities, and employment opportunities. The height and scale of existing buildings varies widely but generally exceed what is permitted under LR3 zoning.
- Neighborhood plans: The Capitol Hill Neighborhood Plan does not include any policies that specifically pertain to the proposed rezone site. However, the Plan does include policies that promote diverse land uses, a mixture of housing types, the preservation of the neighborhood's architectural quality, and the development of new, high-quality housing that blends in with existing historic structures.
- Height limit and views: The surrounding neighborhood does not have a clearly established height pattern but, as is noted above, structure heights often exceed what is permitted under LR3 zoning. The portion of the rezone site that would be developed with a six-story tower would likely reduce the private views from a total of five units on the east side of Bellevue Avenue East. The construction of a wider, eight-story tower was previously considered; however, prior to the design review process, the Applicant agreed to narrow the tower and reduce its height from eight stories to six. The tower, which would extend along the north property line of the rezone site, would face a parking lot and a blank wall of an existing residential building. Proposed pedestrian infrastructure, existing trees, and other planned landscaping will help create a buffer between the proposed tower and the neighboring property to the north.
- Precedential effects: With the exception of a few single-family properties and some parking lots, most properties in the immediate vicinity of the rezone site are already fully developed at or above existing zoning density. The relatively small size of most of the less developed parcels makes it unlikely that a rezone of 711 Bellevue Avenue East from LR3 to MR would encourage other nearby property owners to pursue the same.
- Evaluation of other impacts: Existing public services and service capacities, including street access, street capacity, transit service, and parking capacity are sufficient to serve the additional residential units that would be permitted under the proposed rezone. DPD's report identifies conditions to mitigate noise,

transportation, and other impacts (see below). Height, bulk, and scale impacts were reviewed and addressed through the design review process.

**Conditions recommended by DPD and the Hearing Examiner**

DPD recommended that approval of the rezone be subject to the following conditions:

- 1) Approval of the rezone shall be conditioned upon the development of the proposed project in accordance with the final approved Master Use Permit drawings, dated June 9, 2010, as modified by design review conditions, including the structure design, structure height, building materials, landscaping, street improvements, parking lot design and layout, signage, and site lighting.

*SEPA conditions – prior to issuance of any construction, shoring or grading permits:*

- 2) The applicant shall provide to the DPD Land Use Planner for approval a Construction Management Plan that identifies construction worker parking and construction material staging areas; truck access routes to and from the site for excavation and construction phases; and sidewalk and street closures with neighborhood notice and posting procedures.
- 3) The applicant shall provide to the DPD Land Use Planner for approval a Construction Noise Management Plan. The Plan shall include a discussion on management of construction-related noise, efforts to mitigate noise impacts, and community outreach efforts to allow people within the immediate area of the project to have opportunities to contact the site to express concern about noise. Activities outside the above-stated restrictions may be authorized upon approval of the Plan to address mitigation of noise impacts resulting from all construction activities. Elements of noise mitigation may be incorporated in to any Construction Management Plans required to mitigate any short-term transportation impacts that result from the project.

*SEPA conditions – during construction:*

- 4) The hours of construction activity shall be limited to non-holiday weekdays between the hours of 7:00 a.m. and 6:00 p.m. and between the hours of 9:00 a.m. and 6:00 p.m. on Saturdays (except that grading, delivery and pouring of cement and similar noisy activities shall be prohibited on Saturdays). This condition may be modified by DPD to allow work of an emergency nature. This condition may also be modified to permit low noise exterior work (e.g., installation of landscaping) after approval from DPD.
- 5) For the duration of the construction activity, the applicant/responsible party shall cause construction truck trips to cease during the hours between 4:00 p.m. and 6:00 p.m. on weekdays.

*Design Review condition – prior to the issuance of any Certificate of Occupancy:*

- 6) The Applicant shall arrange for an inspection with the DPD Land Use Planner to verify that the construction of the buildings with siting, materials, and architectural details is substantially the same as those documented in the approved plans dated June 9, 2010.

The Hearing Examiner also recommended approval of the rezone subject to the following condition:

- 1) The final PUDA for the rezone shall prohibit the operation of any form of “drinking establishment” (as that term is defined in Seattle Municipal Code Section 23.84A.010) on the site.

With regard to DPD’s condition #1, the Master Use Permit drawings dated June 9, 2010, already incorporate all of the design review conditions. That said, the Committee may want to replace DPD’s language with the following: “Approval of the rezone shall be conditioned upon the development of the proposed project in accordance with the final approved Master Use Permit drawings, dated June 9, 2010, which substantially conform to the conditions established during the design review process.”

### **Appeal**

One appeal of the Hearing Examiner’s recommendation was filed by Mr. Ross Radley, an attorney, on behalf of his clients Mr. Rex Himes and Mr. Ron Hull. Mr. Himes and Mr. Hull live across Bellevue Avenue East from the rezone site. The appeal, which was submitted on February 17, 2011, documents Mr. Radley’s clients desire to appeal the Hearing Examiner’s conclusion that the steeply sloping ECA on the western edge of the rezone site was created by human activity during the construction of Interstate 5. (The rezone of an ECA from LR3 to MR is only permitted under very limited circumstances. Once such circumstance is when the ECA was created by human activity.) Ms. Melody McCutcheon, attorney for the Applicant, submitted responses to Mr. Radley’s motion on February 18, 2011, and March 21, 2011. Her responses supported the Hearing Examiner’s conclusion. On March 24, 2011, Mr. Radley filed a reply to Ms. McCutcheon’s March 21 response. Mr. Radley’s reply did not address the issue of whether the evidence in the record supported the Hearing Examiner’s conclusion that the ECA was created by human activity. Instead, Mr. Radley’s reply focused on questions of due process related to an earlier ECA exemption decision.

The Council has no authority to address the earlier ECA exemption decision because it was not timely appealed. The Council also has no jurisdiction to review Type I decisions, which include decisions to exempt applicants from complying with ECA development regulations. Because the content of Mr. Radley’s reply raises issues that are outside the purview of the Council’s authority, and because the Council did not receive any timely requests to supplement the Hearing Examiner’s record for this rezone, Councilmember Clark decided last week that the Committee would not accept oral argument as part of its April 27, 2011, briefing on this rezone. On April 18, Councilmember Clark sent a letter to all the parties of record for this matter notifying them of her decision.

**Staff Recommendation**

Staff recommends approval of the proposed rezone as conditioned by DPD and the Hearing Examiner.

**Next Steps**

Council staff, in consultation with the Law Department, will draft the necessary documents to complete the rezone decision. These include a Council Findings, Conclusions and Decision for the Clerk's File; a Council Bill; and a PUDA. Further discussion and a possible Committee vote on this matter are likely to occur at the May 11, 2011, COBE meeting.

# Rezone Map for 711 Bellevue Avenue East

